MEMORANDUM

TO: Members, Clark Fork Basin Water Management Task Force

FROM: Matthew McKinney, Executive Director
Gerald Mueller, Project Coordinator
Mark Lambert, Project Associate

SUBJECT: Summary of June 9, 2003 meeting

DATE: November 22, 2005

Participants
The following members of the Task Force were present:

Task Force Members:

Holly Franz	PPL Montana
Harvey Hackett	Bitterroot Water Forum
Fred Lurie	Blackfoot Challenge
Bill Slack	Lower Flathead (St. Ignatius)
Elna Darrow	Flathead Basin Commission
Phil Tourangeau	Confederated Salish and Kootenai Tribes
Marc Spratt	Flathead Conservation District
Gail Patton	Sanders County
Jim Dinsmore	Upper Clark Fork Basin Steering Committee
Eugene Manley	Granite County
John Vanisko	Upper Clark Fork River Watershed
Jay Stucky	Clark Fork below Flathead
Verdell Jackson	Legislature

Staff:

Gerald Mueller	Montana Consensus Council (MCC)
Matt McKinney	MCC
Mark Lambert	MCC
Maureen Hartmann	MCC
Mike McLane	Montana Department of Natural Resources and Conservation (DNRC)

Meeting Goals
1. Understand Kerr and Milltown hydro water rights
2. Review preliminary draft of Plan-chapters 7, 8 and the paper on conservation options
3. Review draft newsletter
4. Agree on a plan for developing Plan-chapter 2
5. Review Task Force schedule, budget and funding

Presentation: Holly Franz, PPL Montana—PPL's water rights in association with the Kerr Dam

Holly Franz passed out three documents describing PPL Montana's Kerr Dam water rights, a narrative on the limitations on the legal availability of water in the Flathead River Basin based on PPL-Montana's water rights at Kerr Dam (see Appendix 1), a table showing when flows exceed 14,450 cubic feet per second (cfs) for more than 5 consecutive days at the USGS guage immediately downstream of Kerr Dam (see Appendix 2), and a chart showing the Appendix 2 data. PPL-Montana owns two water rights associated with the production of hydropower at Kerr Dam, a right for the amount of water necessary to fill the 10 feet of storage behind the dam at any time, and for 14,540 cfs of water for power generation. Based on a thirty year average from 1971 to 2000, flows exceeded PPL-Montana water rights only 57 days per year during the high spring flows. Except during this high spring flow period, water is not legally available for appropriation in the Flathead River basin above Kerr Dam. Any water right with a priority date after April 3, 1920 is subject to a call by PPL-Montana. April 3, 1920 is associated with the survey date for Kerr Dam. The Dam was engineered to take the peak flows of 14,500 cfs. Because the Flathead River basin is not yet adjudicated, water commissioners cannot administer the basin's water rights. PPL-Montana, therefore, at present only has the ability to make a call on large single diversions junior to the April 3, 1920 date. To date, PPL-Montana has not made a water rights call; nor has it objected to new water rights permits.

Presentation: Bill Schultz Water Resource Division, DNRC, Missoula office, Milltown Dam Water Rights

What will happen to water when Milltown Dam is removed?

Three water right claims associated with Milltown Dam: storage, irrigation, and power
1. Storage claim: Water Court judge has proclaimed that storage is not a beneficial use, but proceedings concerning the Milltown storage right have been stayed until the adjudication of the three basins to which Milltown is associated, the Upper Clark Fork, the Blackfoot, and the Middle Clark Fork Basin, is completed.
2. Irrigation claim: irrigates grounds directly surrounding dam, not a significant use
3. Power generation claim: 2000 cfs daily, priority date of December 11, 1904.
Stream flow at Milltown Dam: peaks in May and June; can vary between years, but it exceeds 2000 cfs for much of the year.

Water right change authorization:

Significant claims at Milltown are considered non-consumptive, it would be very difficult to transfer this right to a consumptive use; must go through *change authorization process.* Change cannot adversely affect existing water rights and the water right is limited by historic beneficial use.
Changing the water right to a different system (i.e. transfer of right from Clark Fork to Flathead River) is difficult because of probable adverse affects on other water users in the basin.
Only future use that may be feasible is an instream flow, which could be leased or bought.
Abandonment is unlikely; intent to abandon plus a significant amount of time of non-use proves abandonment.

Discussion: Preliminary Drafts of Chapter 7, "Options to Protect the Security of Water Rights"

Additional issues:
- Agriculture versus hydropower water rights
- Return flow and water salvage
- Reexamine the purpose of the adjudication
- New permits may not be legally secure
- The water allocation processes should link surface and ground water

Discussion: Preliminary Drafts of Chapter 8, "Strategies to Promote the Orderly Development of Water"

Additional options:
- Require permits for all new wells
- Review and reduce the upper limits for wells that do not need permits (review 35 gallons per minute and 10 acre feet per year
- Consider additional management requirements for small land parcels
- Establish state requirements for community water systems

Discussion: Review Options for Conserving Water
- Add water yield as an objective for state forest management
- Add water yield to forestry best management practices
- Expand on incentives for efficient use of water, e.g. fixing distribution systems, installing low flow showerheads, etc.

Discussion: Newsletter
- State that the purpose of the adjudication is to protect state water users from appropriation by downstream water users and the federal government
- State that the Plan purpose is/will be means of addressing changes in future water use and in water rights
- Planning for a basin as large as the Clark Fork is a unique endeavor
- Simplify the writing by eliminating the bullet points
- State that the Plan will provide options by sub-basin (options may differ by sub-basin).
- Volunteers to proofread the newsletter: Verdell Jackson, Elna Darrow, Marc Spratt

Watershed/Sub-basin Profiles
- Watersheds include: Upper Clark Fork, Blackfoot, Bitterroot, Middle Clark Fork, Flathead, and Lower Clark Fork
- Profiles will be based on the most current and best available information
- Profiles will include:
    1. Physical availability of water
    2. Existing appropriations of water & estimates of consumptive use
    3. Legal and regulatory obligations
    4. Water available for future use (i.e. unappropriated water and groundwater)

5. Projected demand for future use (e.g. trends in population and subdivisions and change in economy)
6. Gaps in information and knowledge (i.e. what information not currently available to we need to address security of water rights, providing for orderly development, and conservation of water)

Propose a method and estimate the cost for updating the water use data.
Denise DeLuca to do the sub-basin profiles report over the summer

Discussion: budget and funding
DNRC is currently the fiscal agent, but money will shortly be transferred to MCC

Proposed Task Force Schedule

July-August	No Task Force meeting; staff research/writing
Sept.-Feb. 04	6 Task Force meetings; address three topics (protect water rights, orderly water development & conservation) and issues
March 04	Finalize newsletter with proposed plan recommendations and conduct public outreach (public forums, interest group meetings, etc.)
April-June 04	Task Force meetings Respond to public feedback Finalize recommendations Develop strategy to monitor & evaluate plan implementation
July 04	DNRC convenes the formal public hearings for the state water plan
August 04	Task Force meeting Finalize report and recommendations Send report to the printer
Sept. 15, 2004	Distribute report to the legislature, governor & others

Appendix 1

Limitations on the Legal Availability of Water in the Flathead River Basin Based upon PPL Montana LLC∗s Water Rights at Kerr Dam

PPL Montana owns two water rights for the production of hydroelectricity at Ken Dam. The first right, 76L-W-094409-00, is for the amount of water necessary to fill the storage reservoir at any time. The second right, 76L-W-094408-00, is for 14,540 cfs of water for power generation. This flow rate is based upon the capacity of the turbines. The priority date for both water rights is April 3, 1920.

The best location to measure whether PPL Montana∗s water rights at Ken Dam are being satisfied is immediately below the dam. If flows below the dam exceed 14.540 cfs, then PPL Montana has adequate water to 511 the reservoir and operate its turbines at ful) capacity.

USGS gage 12372000, Flathead River near Poison MT, is located immediately downstream from Ken Dam. This gage has a *95* year record beginning August 1, 1907. For purposes of this analysis, the 30 year record from January 1, 1971 through December 31, 2000 is used. While PPL∗s water rights are for 14,540 cfs plus storage, this analysis is conservatively based upon flows of 14,450 cfs.

A review of the USGS flow records shows that water is legally available in the Flathead River Basin above Ken Dam only during the high flow periods of spring runoff. In *5* of 30 years, no water was legally available. In 11 of 30 years (36%), water is available for 32 days or less. On average, water is legally available 57 days per year.

The timing of the spring runoff differs from year to year. In wet years, water is legally available into the second or third week of July. Spring runoff has never extended into August.

Except during periods of high spring runoff, water is <u>not</u> legally available for appropriation in the Flathead River basin above Kerr Dam, and any appropriation with a priority date junior to April 3, 1920 is potentially subject to a call by PPL Montana LLC.

Appendix 2

Year	Dates when flows exceed 14.450 cfs for more than 5 consecutive days at the USGS gap on the Flathead River near Polson (immediately downstream from Kerr Dam)	Total number of days per year when flows exceed 14,450 cfs
1971	April 17-July 24	97
1972	March 2l-July 20	120
1973	None	0
1974	February 15-July 28	159
1975	May 17-July22	58
1976	February 22 - 29; April 14 - July 25	116
1977	None	0
1978	May 17-July 22	65
1979	May 11 -July 5	52
1980	May 24-June 22	30
1981	May l7-July 18	60
1982	May 5 - July 25	77
1983	May 27-July 29	51
1984	June 9-July 5	27
1985	May24-June2S	32
1986	May 27-June 21	26
1987	May 14-May 2l	10
1988	None	0
1989	May 8-18; June 7-24	32
1990	April 14-July 7	86
1991	February 6-24; April 26-July 2 0	109
1992	None	0
1993	January 6-10; May l8-June; 3July 2-10	40
1994	None	0
1995	June 10-July 13; December 3-23	54
1996	January 17-21 January 28- February 3; February 8 - 12; February 19 - July 14	167
1997	April 25- July 16	87
1998	May 27-July 15	50
1999	June 3-July 19	47
2000	April 24- July 11	58
	30 year average	57